

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THOMAS DUGAN, et al.,

Plaintiffs,

v.

CITY OF COLUMBUS, OHIO, et al.,

Defendants.

Case No. 2:15-cv-2698

JUDGE GREGORY L. FROST

Magistrate Judge Norah McCann King

ORDER

On August 20, 2015, the parties filed a stipulation to dismiss Michael Coleman and Tracie Davis as defendants pursuant to Federal Rule of Civil Procedure 41. (ECF No. 10.) In citing to Rule 41, however, the parties ignore the Sixth Circuit's holding in *Letherer v. Alger Group, L.L.C.*, 328 F.3d 262, 265-66 (6th Cir. 2003), *recognized as overruled on other grounds in Blackburn v. Oaktree Capital Mgmt., LLC*, 511 F.3d 633, 636 (6th Cir. 2008). *See also AmSouth Bank v. Dale*, 386 F.3d 763, 778 (6th Cir. 2004).

In *Letherer*, the Sixth Circuit addressed its previous holding that Rule 41 is confined to the dismissal of only an entire *action* and cannot provide a mechanism through which select parties or claims can be dismissed. *Letherer*, 328 F.3d at 266. The *Letherer* court also recognized both that the court of appeals has been inconsistent in applying this rule and that at least five other circuits have interpreted Rule 41 less restrictively. *Id.* at 266 n.2. But although appearing to question the narrow interpretation of Rule 41, the *Letherer* court did not resolve the issue to permit the action undertaken by the parties here. This Court therefore has no choice but to adhere to precedent precluding piecemeal dismissal under Rule 41. Accordingly, the parties

cannot obtain the dismissal they seek under Rule 41.

Recognizing the parties' intent to effectuate the dismissal of Michael Coleman and Tracie Davis as defendants, however, this Court construes the August 20, 2015 filing as one under Federal Rule of Civil Procedure 21. *See Haley v. City of Akron*, No. 5:13-cv-00232, 2014 WL 804761, at *2 (N.D. Ohio Feb. 27, 2014) (construing Rule 41 filing as a Rule 21 motion). The Court then **GRANTS** the motion and drops Michael Coleman and Tracie Davis as defendants. (ECF No. 10.) This action moots the Federal Rule of Civil Procedure 12 motion filed by Michael Coleman and Tracie Davis. (ECF No. 5.)

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE